

LITTLER MENDELSON

A Professional Corporation
One Newark Center, Eighth Floor
Newark, New Jersey 07102
973.848.4700
Attorneys for Defendant
Akeena Solar, Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DAVID APPOLONIA,

Plaintiff,

vs.

AKEENA SOLAR, INC., AKEENA, INC., John
Does 1-10 (Said names being fictitious; real names
unknown) and ABC Corp. 1-10 (Said names being
fictitious; real names unknown),

Defendants.

Civil Action No.

[to be assigned]

NOTICE OF REMOVAL

Electronically Filed

**TO: THE CLERK AND THE HONORABLE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Defendant Akeena Solar, Inc. ("defendant") hereby files this Notice of Removal of the above-captioned action to the United States District Court for the District of New Jersey, from the New Jersey Superior Court, Law Division, Atlantic County, where the action is now pending, as provided by Title 28, United States Code, Chapter 89 and states:

1. Plaintiff David Appolonia (“plaintiff”) commenced this action on April 1, 2008 by filing a Complaint in the Superior Court of New Jersey, Law Division, Atlantic County, captioned *David Appolonia v. Akeena Solar, Inc., Akeena, Inc., John Does 1-10 (Said names being fictitious; real names unknown) and ABC Corp. 1-10 (Said names being fictitious; real names unknown)*, bearing Docket No. L-1142-08 (“the State Court Action”). The State Court Action is now pending in that court.

2. Plaintiff served defendant with the Summons and Complaint on or about April 17, 2008. This Notice of Removal is filed within 30 days of that date, as required by 28 U.S.C. § 1446(b).

3. Attached hereto as **Exhibit A** is a copy of all process, pleadings and orders served upon defendant in the State Court Action, pursuant to 28 U.S.C. § 1446(a).

4. The State Court Action is between citizens of different states and is a civil action over which the district courts of the United States have original jurisdiction by virtue of diversity jurisdiction granted by 28 U.S.C. § 1332. Specifically, plaintiff is a citizen of New Jersey, and defendant Akeena Solar, Inc. is a citizen of Delaware (its state of incorporation) and California (its principal place of business). Defendant Akeena, Inc. is no longer in existence.

5. Fictitious defendants have not been adequately identified. Therefore, their citizenship shall be disregarded pursuant to 28 U.S.C. § 1441(a).

6. Additionally, the matter in controversy exceeds the sum \$75,000, exclusive of interest and costs, based on Paragraph 10 of plaintiff’s Complaint, which alleges that “the damages at issue are in excess of \$150,000.”

7. This Notice of Removal is being filed in the United States District Court for the District of New Jersey, the district court of the United States for the district and division within which the State Court Action is pending, as required by 28 U.S.C. §§ 1441(a) and 1446(a).

8. Upon filing of this Notice of Removal, defendant shall give written notice thereof to plaintiff's counsel, Louis A. Bové, Esq., and Jay M. Green, Esq., of Bodell, Bove, Grace & Van Horn, and shall file copies of this Notice of Removal with the Clerk, Superior Court of New Jersey, Law Division, Atlantic County, pursuant to 28 U.S.C. §1446(d).

9. By filing this Notice of Removal, defendant does not waive any defenses available to it at law, in equity or otherwise.

WHEREFORE, defendant respectfully requests that this action proceed in this Court as an action properly removed to it.

LITTLER MENDELSON, P.C.
Attorneys for Defendant
Akeena Solar, Inc.

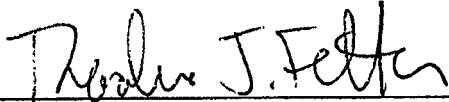
By: /s/ Keith J. Rosenblatt
Keith J. Rosenblatt

Dated: May 13, 2008

EXHIBIT A

If you do not file and serve a written Answer or motion within THIRTY-FIVE (35) DAYS, the Court may enter a judgment against you for the relief Plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of numbers is also provided.



THEODORE J. FETTER, Clerk of
the Superior Court

DATED: April 15, 2008

Name of defendant to be served: Akeena Solar, Inc.

Address of defendant to be served: 26 Commerce Road, Suite F, Fairfield, NJ 07004

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Boulevard, First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL

(609) 345-3444

LEGAL SERVICES

(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

LAWYER REFERRAL

(201) 488-0044

LEGAL SERVICES

(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn.: Judicial Intake
First F., Courts Facility

49 Rancocas Road

Mt. Holly, NJ 08060

LAWYER REFERRAL

(609) 261-4862

LEGAL SERVICES

(609) 261-1088

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
1st Fl. Hall of Records
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL

(609) 964-4520

LEGAL SERVICES

(609) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
9 N. Main Street, Box DN-209
Cape May Court House, NJ 08210

LAWYER REFERRAL

(609) 463-0313

LEGAL SERVICES

(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302

LAWYER REFERRAL

(609) 692-6207

LEGAL SERVICES

(609) 451-0003

ESSEX COUNTY

Deputy Clerk of the Superior Court
237 Hall of Records
465 Dr. Martin Luther King, Jr., Blvd.
Newark, NJ 07102

LAWYER REFERRAL

(201) 622-6207

LEGAL SERVICES

(201) 624-4500

GLOUCESTER COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn.: Intake

First Fl., Court House

1 North Broad Street, PO Box 129

Woodbury, NJ 08096

LAWYER REFERRAL

(609) 848-4589

LEGAL SERVICES

(609) 848-5360

HUDSON COUNTY

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House - 1st Floor

583 Newark Avenue

Jersey City, NJ 07306

LAWYER REFERRAL

(201) 798-2727

LEGAL SERVICES

(201) 792-6363

HUNTERDON COUNTY

Deputy Clerk of the Superior Court
Civil Division

65 Park Avenue

Flemington, NJ 08862

LAWYER REFERRAL

(609) 735-2611

LEGAL SERVICES

(609) 782-7979

MERCER COUNTY

Deputy Clerk of Superior Court
Local Filing Office, Courthouse
175 South Broad St., PO Box 8068
Trenton, NJ 08650

LAWYER REFERRAL

(609) 585-6200

LEGAL SERVICES

(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Administration Building, 3rd Floor
1 Kennedy Sq., PO Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL

(908) 828-0053

LEGAL SERVICES

(908) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
71 Monument Park, PO Box 1262
Court House - East Wing
Freehold, NJ 07728-1262

LAWYER REFERRAL

(908) 431-5544

LEGAL SERVICES

(908) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
30 Schuyler Pl., PO Box 910
Morristown, NJ 07960-0910

LAWYER REFERRAL

(201) 267-5882

LEGAL SERVICES

(201) 285-6911

SALEM COUNTY

Deputy Clerk of the Superior Court
92 Market St., PO Box 18
Salem, NJ 08079

LAWYER REFERRAL

(609) 678-8363

LEGAL SERVICES

(609) 451-0003

OCEAN COUNTY:

Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754

LAWYER REFERRAL

(908) 240-3666

LEGAL SERVICES

(908) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.

Paterson, NJ 07505

LAWYER REFERRAL

(201) 278-9223

LEGAL SERVICES

(201)345-7171

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
PO Box 3000

Somerville, NJ 08876

LAWYER REFERRAL

(908) 685-2323

LEGAL SERVICES

(908) 231-0840

SUSSEX COUNTY

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL

ATLANTIC COUNTY COURT HOUSE
SUPERIOR COURT LAW DIV
1201 BACHARACH BLVD
ATLANTIC CITY NJ 08401

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 345-6700
COURT HOURS

DATE: APRIL 08, 2008
RE: APOLONIA DAVID VS AKEENA SOLAR INC ETAL
DOCKET: ATL L -001142 08

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON DARYL F. TODD

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002
AT: (609) 343-2296.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: LOUIS A. BOVE
BODELL BOVE GRACE & VAN HORN
1913 GREENTREE ROAD
SUITE A
CHERRY HILL NJ 08003

JUDBED0

STATEWIDE ADJOURNMENT PROCEDURE FOR CIVIL TRIALS AND ARBITRATIONS

[AS APPROVED BY THE SUPREME COURT AND PROMULGATED BY DIRECTIVE #6-04]

1. All requests to adjourn a civil trial or an arbitration are governed by *Rule 4:36-3(b)*.
2. A good faith effort shall be made to discuss any request for an adjournment with all other parties before the request is presented to the court.
3. All adjournment requests must be made in writing, submitted to the Civil Division Manager. Faxed submissions are acceptable. Telephone requests will not be accepted absent exceptional circumstances. Requests must be copied to all other parties.
4. Any request for an adjournment must be presented as soon as the need for an adjournment is known. Absent exceptional circumstances, the request must be presented no later than the close of business on the Wednesday preceding the Monday of the week the matter is scheduled for trial or arbitration.
5. The written request must indicate the reason or reasons the adjournment has been requested, and whether the other parties have consented to the proposed adjournment. The written request should also include a new proposed date for trial or arbitration, consented to by all parties. If consent cannot be obtained, the court will determine the matter by conference call with all parties.
6. If the adjournment request is based upon a conflict with another court proceeding, the party requesting the adjournment must indicate whether he or she is designated trial counsel and supply the name of the other matter, the court and county in which it is pending, and the docket number assigned to the matter.
7. No adjournments will be granted to accommodate dispositive motions returnable on or after the scheduled trial date.
8. A matter should not be considered adjourned until court staff has confirmed that the request for an adjournment has been granted. Timely response will be given to the party requesting the adjournment, who will then be responsible for communicating the decision to all other parties.
9. To the extent any party is dissatisfied with the decision made by the Civil Case Management Office, the following procedure should be followed:

In master calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party may ask that the matter be presented to the Civil Presiding Judge;


In individual/team calendar counties, the aggrieved party should present the matter to the Civil Division Manager directly; to the extent that any party is dissatisfied with the decision made by the Civil Division Manager, that party
10. Requests for adjournment of a civil trial based on expert unavailability are governed by *R. 4:36-3(c)*.

Use for initial Law Division
Civil Part pleadings (not motions) under Rule 4:5-1
**Pleading will be rejected for filing, under Rule 1:5-6(c),
if information above the black bar is not completed or
if attorney's signature is not affixed.**

BATCH NUMBER:

ATTORNEY/PRO SE NAME Louis A. Bove, Esq./Jay M. Green, Esq.		TELEPHONE NUMBER (856) 414-1441	COUNTY OF VENUE Atlantic
FIRM NAME (If applicable) Bodell, Bove, Grace and Van Horn		DOCKET NUMBER (When available) 6-1142-08	
OFFICE ADDRESS 1913 Greentree Road, Suite A Cherry Hill, NJ 08003		DOCUMENT TYPE Complaint	
		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Plaintiff David Appolonia		CAPTION David Appolonia v. Akeena Solar, Inc. and Akeena, Inc., et al.	
CASE TYPE NUMBER (See reverse side for listing) 509	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP <input checked="" type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
	DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE:	

ATTORNEY SIGNATURE 

SIDE 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 699 TORT – OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Mass Tort (Track IV)

- | | |
|---------------------------------------|-----------------------|
| 241 TOBACCO | 275 ORTHO EVRA |
| 248 CIBA GEIGY | 276 DEPO-PROVERA |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 277 MAHWAH TOXIC DUMP |
| 271 ACCUTANE | 278 ZOMETHA/ARELIA |
| 272 BEXTRA/CELEBREX | 601 ASBESTOS |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 619 VIOXX |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold

☐ Putative Class Action

☐ Title 59

BODELL, BOVE, GRACE & VAN HORN

By: Louis A. Bové, Esquire
Jay M. Green, Esquire
1913 Greentree Road, Suite A
Cherry Hill, NJ 08003
(856) 414-1441

30 S. 15th Street
6th Floor
Philadelphia, PA 19102
(215) 864-6600

DAVID APPOLONIA

Plaintiff(s),

vs.

AKEENA SOLAR, INC., AKEENA, INC.,
John Does 1-10 (Said names being fictitious;
real names unknown) and ABC Corp. 1-10
(Said names being fictitious; real names
unknown),

Defendant(s).

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: ATLANTIC COUNTY
:

: DOCKET NO.: 2-1142-08

: CIVIL ACTION

: **COMPLAINT AND DEMAND FOR
JURY TRIAL**
:
:

Plaintiff David Appolonia, who resides at 6 Princeton Avenue, Egg Harbor Township,
New Jersey 08234, by and through his attorneys, Bodell, Bové, Grace & Van Horn, P.C., by way
of Complaint alleges as follows:

FIRST COUNT – BREACH OF CONTRACT

1. Plaintiff David Appolonia resides at 6 Princeton Avenue, Egg Harbor Township,
New Jersey 08234.

2. Upon information and belief, Defendants Akeena Solar, Inc. and Akeena, Inc.

(collectively "Akeena") have a principal place of business at 16005 Los Gatos Boulevard, Los Gatos, California 95032. Akeena Solar, Inc. is incorporated in the state of Delaware, and Akeena, Inc. is incorporated in the State of California. Akeena is in the business of selling home solar systems. Akeena also maintains its East Coast office at 26 Commerce Road, Suite F, Fairfield, New Jersey 07004.

3. On December 8, 2005, Plaintiff David Appolonia accepted a position as Sales Executive at Akeena, effective December 12, 2005. He worked out of his home office at 6 Princeton Avenue, Egg Harbor Township, New Jersey 08234.

4. Though Akeena has yet to formally terminate Mr. Appolonia, it constructively terminated him by deleting his necessary sales software account and company e-mail account, as well as stopping communication of leads, on or around November 1, 2006.

5. The terms of Mr. Appolonia's compensation are set forth in the attached two-page contract, executed by Bill Scott, Executive Vice President of Akeena and Plaintiff David Appolonia. See Exhibit A.

6. The two page contract was drafted by Mr. Scott and/or other agents of Akeena.

7. Pursuant to the express terms of the contract, with the exception of promised training pay, Mr. Appolonia was paid only by commissions earned pursuant to the express terms of the agreement. More specifically, he is entitled to the following payments:

- (A) For systems sold at a total price of under \$200,000, 50% of the 8% commission "is earned upon Akeena acceptance of a signed contract (earned after the 72 hour waiting period) with the remaining 50% paid after receipt of final payment from the customer. . . ."

- (B) "Commissions on systems over \$200,000 are paid based on progress payments received from the customer, and will be included in monthly commission reports."
- (C) During the initial probation period of 90 days, 75% of the 8% commission was to be received "upon Akeena acceptance of a signed contract," and 25% upon receipt of final payment from the customer. Additionally, training pay of \$275 per week was to be paid for the first two weeks of employment, and a recoverable draw of \$675 was to be paid for the third week.

8. Mr. Appolonia was not reimbursed for any travel expenses in his sales areas of New Jersey, Connecticut and New York, including but not limited to gas, tolls, mileage, and hotels. Additionally, pursuant to the attached contract, Mr. Appolonia was required to pay for his own laptop computer and digital camera.

9. Akeena has breached its contract with Mr. Appolonia by failing to pay him the commissions agreed upon pursuant to the express terms of the contract. Additionally, Akeena did not pay Mr. Appolonia any of the training pay required under the terms of the contract.

10. In light of the fact that Akeena continues to install the systems sold by Mr. Appolonia, and he is continuing to earn commissions, the exact amount owed to Mr. Appolonia cannot be determined without specificity pending discovery. However, based upon the information available to Plaintiff at this time, upon information and belief, the damages at issue are in excess of \$150,000.

WHEREFORE, Plaintiff David Appolonia demands judgment against Defendant Akeena Solar, Inc. and Akeena, Inc., for wrongfully withheld wages and commissions, compensatory damages, punitive damages, consequential damages, costs, pre- and post-judgment interest and

attorneys' fees, and any further relief to which Plaintiff is entitled.

SECOND COUNT – VIOLATION OF NEW JERSEY WAGE PAYMENT LAW

11. Plaintiff incorporates the allegations in Paragraphs 1 through 10 as if they were expressly set forth herein.

12. Akeena is an employer within the meaning of the New Jersey Wage Payment Law, N.J.S.A. § 34:11-4.1(a).

13. Plaintiff is an employee within the meaning of N.J.S.A. § 34:11-4.1(b).

14. Akeena has paid the Plaintiff compensation for his services that are wages within the meaning of N.J.S.A. § 34:11-4.1(c).

15. Akeena has withheld and diverted from the Plaintiff wages and commissions which he has earned pursuant to the express contract drafted and executed by Akeena.

16. Akeena has never altered the terms of Plaintiff's commission structure pursuant to N.J.S.A. § 32:11-4.6(b).

17. Akeena has withheld and diverted the wages and commissions of the Plaintiff as set forth above in violation of N.J.S.A. § 34:11-4.3.

18. Akeena has withheld and diverted the wages and commissions of the Plaintiff as set forth above in violation of N.J.S.A. § 34:11-4.4, *et seq.*

19. Pursuant to N.J.S.A. § 34:11-4.7, Plaintiff has a private right of action against Akeena, his former employer, for the full amount of wrongfully withheld or diverted wages and commissions.

20. In light of the fact that Akeena continues to install the systems sold by Mr. Appolonia,

and he is continuing to earn commissions, the exact amount owed to Mr. Appolonia cannot be determined without specificity pending discovery. However, based upon the information available to Plaintiff at this time, upon information and belief, the damages at issue are in excess of \$150,000.

WHEREFORE, Plaintiff David Appolonia demands judgment against Defendant Akeena Solar, Inc. and Akeena, Inc., for wrongfully withheld wages and commissions, compensatory damages, punitive damages, consequential damages, costs, pre- and post-judgment interest and attorneys' fees, and any further relief to which Plaintiff is entitled.

THIRD COUNT – VIOLATION OF CALIFORNIA LABOR CODE

21. Plaintiff incorporates the allegations in Paragraphs 1 through 20 as if they were expressly set forth herein.

22. Akeena is an employer within the meaning of the Cal. Lab. Code §200, et seq.

23. Akeena has paid the Plaintiff compensation for his services that are wages within the meaning of Cal. Lab. Code §200(a).

24. Akeena has withheld and diverted from the Plaintiff wages and commissions which he has earned pursuant to the express contract drafted and executed by Akeena.

25. Akeena has withheld and diverted the wages and commissions of the Plaintiff as set forth above in violation of Cal. Lab. Code §201.

26. Akeena has failed to pay wages and commissions to the Plaintiff as set forth above in violation of Cal. Lab. Code §202.

27. Akeena has failed to pay wages and commissions to the Plaintiff as set forth above in violation of Cal. Lab. Code §204.

28. Plaintiff is entitled to penalties pursuant to Cal. Lab. Code §203.

29. Plaintiff is entitled to attorney's fees and costs pursuant to Cal. Lab. Code §218.5.

30. Plaintiff is entitled to interest pursuant to Cal. Lab. Code §218.6.

31. Pursuant to Cal. Lab. Code §218, Plaintiff has a private right of action against Akeena, his former employer, for the full amount of wrongfully withheld or diverted wages.

32. In light of the fact that Akeena continues to install the systems sold by Mr. Appolonia, and he is continuing to earn commissions, the exact amount owed to Mr. Appolonia cannot be determined without specificity pending discovery. However, based upon the information available to Plaintiff at this time, upon information and belief, the damages at issue are in excess of \$150,000.

WHEREFORE, Plaintiff David Appolonia demands judgment against Defendant Akeena Solar, Inc. and Akeena, Inc., for wrongfully withheld wages and commissions, compensatory damages, punitive damages, consequential damages, costs, waiting time penalties, pre- and post-judgment interest and attorneys' fees, and any further relief to which Plaintiff is entitled.

FOURTH COUNT – ACCOUNTING

33. Plaintiff incorporates the allegations in Paragraphs 1 through 32 as if they were expressly set forth herein.

34. Mr. Appolonia has requested, on numerous occasions, an updated and complete accounting of his commission and payroll records, as well as the sales records regarding the clients secured by Plaintiff.

35. Akeena has failed to provide these requested records, and continues to refuse to

provide these records.

36. The specific amount of money owed by Akeena to Plaintiff is unknown to Plaintiff and cannot be ascertained without a complete accounting of Plaintiff's commission and payroll records, as well as all sales records regarding the clients secured by Plaintiff.

WHEREFORE, Plaintiff David Appolonia demands an updated complete accounting of his commission and payroll records arising from his employment with Akeena, as well as all sales records regarding the clients secured by Plaintiff, costs of suit, attorneys' fees, and any further relief to which Plaintiff is entitled.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:5-1(c), the Court is hereby advised that Louis A. Bove, Esquire is hereby designated as trial counsel for Plaintiff David Appolonia.

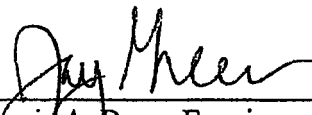
DEMAND FOR JURY TRIAL

A trial by jury is hereby demanded as to all issues.

CERTIFICATION

Pursuant to Rule 4:5-1(b)(2), after my initial investigation of this matter, it does not appear that the matter in controversy is the subject of any other action pending in any Court or of a pending arbitration proceeding or that any other actions or arbitration proceedings are contemplated.

In addition, my initial investigation of this matter does not reveal that there are any other parties that should be joined in the action.



Louis A. Bove, Esquire
Jay M. Green, Esquire

Attorneys for Plaintiff David Appolonia

Dated: March 31, 2008

Ex. A.

Akeena Solar 605 University Avenue, Los Gatos, CA 95032 408-395-7774

www.akeena.net

A

December 8, 2005

David Appolonia
6 Princeton Avenue
Egg Harbor Township, NJ 08234
609-927-2676 (h)
609-839-4898 (c)
daveappolonia@verizon.net

Dear David:

We are pleased to offer you the position of Sales Executive at Akeena effective December 12, 2005. We are looking forward to working with you as we achieve our goals at Akeena. This letter summarizes the terms of our offer and is valid for seven days, at which time this offer may be withdrawn.

As Sales Executive with Akeena your job responsibilities will include responding to existing and new customer leads, prospecting for new customers, working with referrals, finding and evaluating new sources of leads, making customer site visits, and gathering the necessary site data so that we may quote each customer job accurately. In addition, you will prepare the necessary analysis and proposal documents to close the customer sale and apply for their initial rebates.

You will be compensated on a commission-only basis, as follows: the commission amount is calculated as 8.0% of the total sale amount. Commissions are paid monthly.

For systems sold at a total price of under \$200,000, 50% of a commission is earned upon Akeena acceptance of a signed contract (earned after the 72 hour waiting period) with the remaining 50% paid after receipt of final payment from the customer (usually after the final local building department inspection). Commissions on systems over \$200,000 will be paid based on progress payments received from the customer, and will be included in monthly commission reports.

There is an initial probation period of 90 days, with periodic reviews. During this time, you will receive 75% of your commission upon Akeena acceptance of a signed contract, and 25% upon receipt of final payment from the customer. You will also receive training pay of \$275 per week for your first two weeks of employment, and a recoverable draw of \$675 for the third week.

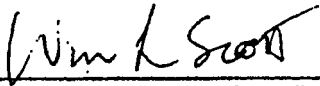
You are expected to provide your own laptop computer that is suitable for use with the Company's software, and a digital camera. You will be entitled to the company's standard insurance benefits.

Your acceptance of this offer and commencement of employment with the Company is contingent upon the execution and delivery of the Company's Employment, Confidential Information and Invention Assignment Agreement, a copy of which is enclosed for your review and execution (the "Confidentiality Agreement"), prior to or on your start date. Notwithstanding anything in this offer letter to the contrary, employment with the Company will be on an "at-will" basis, meaning that either you or the Company may terminate your employment at any time for any reason or no reason without further obligation or liability.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me, along with a signed and dated copy of the Confidentiality Agreement. This letter, together with the Confidentiality Agreement, sets forth the terms of your employment with the Company and supersedes any prior representations or agreements, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by the Company and by you.

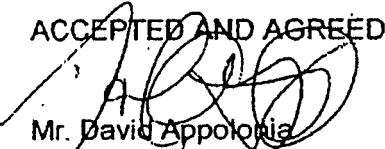
Very truly yours,

AKEENA, INC.



By: Bill Scott, Executive Vice President

ACCEPTED AND AGREED:



Mr. David Appolonia

Date

11/08/05